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**CORRESPONDENCE MEMORANDUM**

**DATE:** February 7, 2011

**TO:** Employee Trust Funds Board  
Teachers Retirement Board  
Wisconsin Retirement Board

**FROM:** Linda Owen, Policy Analyst  
Office of Policy, Privacy and Compliance

**SUBJECT:** Clearinghouse Rule #10-137: Relating to Changes Made to ETF 20.055  
Regarding Spousal and Domestic Partner Consent on Benefit Applications

**Staff recommends the Boards approve the final version of this proposed rule.**

The Department of Employee Trust Funds (ETF) proposes to revise the existing ETF administrative rules to reflect certain provisions in 2009 Wisconsin Act 28. This legislation extended to members' domestic partners the benefit provisions in Chapter 40 of the statutes that previously applied only to members' spouses.

One such provision is the requirement that if a WRS participant has been married or in a domestic partnership for at least the full year prior to the date a retirement annuity begins, the participant must select a joint and survivor annuity option with the spouse or domestic partner as the named survivor unless the spouse or domestic partner signs the retirement benefit application consenting to an alternate option selection. The spouse or domestic partner must also sign an application for a separation benefit. The existing "spousal consent" rule must be amended to reflect the extension of this signature requirement to domestic partners.

The other amendment to ETF 20.055 is needed to provide ETF with the flexibility in waiving spousal/domestic partner consent when the signature of the participant's spouse is unobtainable. S. 40.23 (7) (a) provides that the spouse's or domestic partner's signature is not required if the participant establishes, to ETF's satisfaction, that by reason of absence or other inability, the spouse's signature cannot be obtained. The current rule is more restrictive than the statutes because it limits the circumstances under which ETF will waive the requirement for the signature to two specific situations:

Reviewed and approved by Robert J. Conlin, Deputy Secretary.

Signature

2/18/11  
Date

Board	Mtg Date	Item #
JI	3.10.11	4A
WR	3.10.11	5A
TR	3.10.11	5A
ETF	3.10.11	7A

1. The court has declared the spouse or domestic partner to be incompetent, or
2. The participant does not know, and has not known for the past 90 days, the whereabouts of the spouse or domestic partner.

The proposed administrative rule amendment would provide ETF with the discretion to waive the requirement for the spouse's or domestic partner's signature in exceptional situations where the spouse's or domestic partner's signature cannot be obtained for reasons other than those provided in the current rule.

ETF has previously taken the following actions as part of the rule promulgation process:

- Scope statement approved by ETF Secretary on August 18, 2010.
- Scope statement published in Wisconsin Administrative Register No. 657 on September 15, 2010.
- Proposed rule submitted to Legislative Council Administrative Rules Clearinghouse on November 16, 2010.
- Published notice of hearing in Wisconsin Administrative Register No. 660 on December 15, 2010.
- Received Legislative Council Rules Clearinghouse Report on December 9, 2010.
- Held a public hearing on February 10, 2011.

The final draft report on the proposed administrative rule is attached to this memorandum. Department staff made minor changes to the rule in response to comments received in the Legislative Council Staff Clearinghouse Report. The rule now conforms to recommended form and style. There were no appearances at the public hearing held at ETF on February 10, 2011, and ETF did not receive any written comments after the hearing. Department staff will be available at the meeting to discuss this memorandum and answer any questions you may have regarding the proposed rule.

Board approval of the final version of the proposed rule is the next step in the administrative rule promulgation process. Once approved by the Employee Trust Funds Board, ETF will submit the proposed rule to the State Legislature for consideration.

Attachment: Clearinghouse Rule #10-137

**Clearinghouse Rule 10-137**  
**State of Wisconsin**  
**Department of Employee Trust Funds,**  
**Employee Trust Funds Board, Teachers Retirement Board**  
**and Wisconsin Retirement Board**

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**FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #10-137**

**FINAL RULE** to amend administrative rule ETF 20.055 relating to the waiver of spousal/domestic partner consent on Wisconsin Retirement System benefit applications.

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#### **Agency Person to be Contacted for Questions**

Please direct any questions about this rule-making to Linda Owen, Policy Analyst, Office of Policy, Privacy and Compliance, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 261-8164. E-mail address: linda.owen@etf.state.wi.us.

#### **Statement Explaining Need for Rule**

This rule-making is needed to amend the existing spousal consent rule to provide flexibility in situations where a spouse's signature is unobtainable.

#### **Analysis Prepared by the Department of Employee Trust Funds**

1. Statutes Interpreted:  
S. 40.24 (7) and s. 40.25 (3m), Stats. relating to ETF waiving the requirement for a spouse's/domestic partner's signature on Wisconsin Retirement System benefit applications.
2. Statutory Authority:  
Sections 40.03 (2) (i), (ig), (ir), (t) and 227.11 (2) (a), Stats.
3. Explanation of Agency Authority:

By statute, the ETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes. Also, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

4. Related Statute or Rule:

There are no other rules that clarify the circumstances under which ETF will accept a participant's documentation and certification that a participant is unable to obtain a spouse's/domestic partner's signature on a Wisconsin Retirement System benefit application.

5. Plain Language Analysis:

If a participant has been married for at least one full year at the time a retirement benefit begins, s. 40.24 (7), Stats., requires a spouse's/domestic partner's signature on Wisconsin Retirement System retirement benefit applications unless the participant selects a joint and survivor annuity with the spouse as the named survivor. Section 40.25 (3m), Stats., requires a spouse's/domestic partner's signature on Wisconsin Retirement System separation benefit applications, and on lump sum retirement benefit applications when the participant is not restricted to a lump sum retirement benefit.

Both ss. 40.24 (7) and s. 40.25 (3m), Stats., provide that ETF may waive the requirement for a spouse's/domestic partner's signature in situations where the participant's spouse's or domestic partner's signature cannot be obtained. ETF 20.055 currently restricts ETF to waiving the spousal/domestic partner's signature only in cases where either the spouse/domestic partner has been declared incompetent or the participant does not know the spouse's/domestic partner's whereabouts for at least 90 days. The proposed amendment would increase ETF's flexibility to waive the spousal/domestic partner consent requirement if the participant submits evidence to the department's satisfaction that the spouse's/domestic partner's signature is unobtainable. This flexibility is more consistent with the statutory language and intent than the current rule.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations:

There are no existing federal regulations that specifically address how public retirement plans administer a spousal/domestic partner consent requirement.

7. Comparison with Rules in Adjacent States

- Illinois – The State Retirement Systems of Illinois does not require a spouse's signature either on refunds (equivalent to WRS separation benefits under s. 40.25 (2), Stats.) or on retirement benefit applications. Therefore, waiving the spousal consent requirement is not an issue.
- Iowa – The Iowa Public Employees Retirement System (IPERS) does not require a spouse's signature on refunds (equivalent to WRS separation benefits under s. 40.25 (2), Stats.). A spouse's signature is required on retirement benefit applications, even if the member selects a joint and survivor annuity with

the spouse as the named survivor. IPERS will only waive that requirement if the member submits a sworn statement that he/she cannot locate the spouse. If the spouse has a legal guardian or has granted power of attorney (POA), the guardian or POA can sign on behalf of the spouse.

- Michigan – The Michigan State Employees Retirement does not require a spouse's signature on refunds (equivalent to WRS separation benefits under s. 40.25 (2), Stats.). The spouse's consent is required on retirement benefit applications unless the member selects a joint and survivor annuity continued at 100% to the spouse. The only exception to the spousal consent requirement is if the spouse has a legal guardian or has granted power of attorney (POA); in that case the guardian or POA can sign the application on behalf of the spouse.
- Minnesota – The Minnesota State Retirement System (MSRS) does not require a spouse's signature on refunds (equivalent to WRS separation benefits under s. 40.25 (2), Stats.). MSRS does not waive the spousal consent requirement; if the spouse's signature cannot be obtained, the annuity option defaults to a joint and survivor annuity continued at 50% to the spouse. The only exception is if the spouse has a legal guardian or has granted power of attorney (POA), the guardian or POA can sign on behalf of the spouse.

8. Summary of Factual Data and Analytical Methodologies:

The proposed rule amendment is intended to bring ETF's waiver of spousal/domestic partner consent rule into closer harmony with the statutes, and provide ETF with the greater flexibility authorized in the statutes.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report:

The rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System.

10. Effect on small business:

There is no effect on small business.

11. Agency contact person:

Linda Owen, Policy Analyst, Department of Employee Trust Funds, 801 W Badger Rd, Madison, WI 53713-7931, P.O. Box 7931 (use ZIP Code 53707 for PO Box); Phone: 608-261-8164; E-mail: [linda.owen@etf.state.wi.us](mailto:linda.owen@etf.state.wi.us)

12. Proposed Effective Date:

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided by s. 227.22 (2) (intro.), Stats.

13. Fiscal Estimate:

The rule will not have any fiscal effect on the administration of the Wisconsin Retirement System, nor will it have any fiscal effect on the private sector, the state or on any county, city, village, town, school district, technical college district, or sewerage districts.

14. Free Copies of Proposed Rule:

Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931. The telephone number is: (608) 266-1071.

## Text of Rule

ETF 20.055 is amended to read:

**ETF 20.055 Spouse's or domestic partner's signature on a benefit application.**

Documentation of inability to obtain a spouse's or domestic partner's signature on an annuity application as required under s. 40.24 (7) (a) or s. 40.25 (3m), Stats., or on a separation benefit application as provided in s. 40.25 (3m), Stats., shall be accepted for the following reasons only:

(1) (a) The spouse or domestic partner is incompetent as defined under s. 54.10 (3), Stats., and a copy of the court order appointing the spouse's or domestic partner's guardian is submitted to the department, ~~except guardianship papers are not required when he benefit payable is a single sum benefit payable under s. 40.25 (1), Stats.~~

(b) The guardian's signature shall be required on the annuity application in lieu of the spouse's or domestic partner's signature if the participant chooses an annuity option other than an option specified under s. 40.24 (7) (a) or 40.25 (1) (a), Stats.; ~~or.~~

(c) The spouse's, domestic partner's or guardian's signature is not required when the participant is only eligible for a single sum benefit payable under s. 40.25 (1) (a), Stats.

(2) The participant certifies, on a form provided by the department, that the participant does not now know and has not known the whereabouts of the spouse or domestic partner for at least the 90 days immediately prior to the date the application is signed, or the participant provides evidence to the department's satisfaction that the spouse's or domestic partner's signature is otherwise not obtainable.

**Note:** Section ETF 20.055 (2) requires ~~forms~~ a form which ~~are~~ is available at no cost by contacting the Department of Employee Trust Funds, P.O. Box 7930, Madison, WI 53707.

(3) The requirements in s. 40.24 (7) (a) (intro) and (b), Stats., and s. 40.25 (3m), Stats., as it applies to s. 40.25 (1) (b), Stats., related to the requirement for the domestic partner's signature on benefit applications, shall not apply if the participant is prohibited under the internal revenue code from selecting a joint and survivor annuity with the domestic partner as the named survivor, based on the participant's and domestic partner's respective ages.





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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Ronald Sklansky  
*Clearinghouse Director*

Terry C. Anderson  
*Legislative Council Director*

Richard Sweet  
*Clearinghouse Assistant Director*

Laura D. Rose  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

### CLEARINGHOUSE RULE 10-137

AN ORDER to amend ETF 20.055, relating to the waiver of spousal/domestic partner consent on Wisconsin retirement system benefit applications.

Submitted by DEPARTMENT OF EMPLOYEE TRUST FUNDS

11-18-2010 RECEIVED BY LEGISLATIVE COUNCIL.

12-07-2010 REPORT SENT TO AGENCY.

RS:HJF

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**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES ☐ NO ☒

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES ☒ NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES ☐ NO ☒

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached YES ☐ NO ☒

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES ☒ NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES ☐ NO ☒

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES ☐ NO ☒



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 10-137

#### Comments

**[NOTE:** All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

#### 2. Form, Style and Placement in Administrative Code

- a. In the rule preface plain language analysis, the second sentence should begin with the reference "Section 40.25 (3m), Stats." The first sentence of the second paragraph should begin with the phrase "Both ss. 40.24 (7) and 40.25 (3m), Stats."
- b. References to the law in adjacent states are not informative without comparing and contrasting the Wisconsin provisions and those in the adjacent states.
- c. In the treatment clause, the notation "SECTION 1." should be inserted before the phrase "ETF 20.055 is amended to read:".
- d. The end of the introductory clause of s. ETF 20.055 should read "...shall be accepted for any of the following reasons:".
- e. In s. ETF 20.055 (1) (b), the second occurrence of the notation "s." should be deleted since the statutory reference is in the disjunctive form.
- f. In s. ETF 20.055 (1) (c), the paragraph letter "c" should be placed within parentheses.
- g. In s. ETF 20.055 (3), the sentence, after it is amended, should read: "The requirements in s. 40.24 (7) (a) (intro.) and (b), Stats., and in s. 40.25 (3m), Stats., as it applies to s. 40.25 (1) (b), Stats., related to..."

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5. Clarity, Grammar, Punctuation and Use of Plain Language

In the rule preface statement of where comments on the rule are to be submitted, and the deadline for their submission, it appears that the date "2010" should be replaced by the date "2011."

## **Response to Legislative Council Staff Recommendations**

ETF implemented all the Legislative Council staff recommendations.

## **List of Persons Appearing or Registering For or Against the Rules**

No persons appeared at the hearing or registered for or against the rule at the public hearing on February 10, 2010.

## **Summary of Comments Received at the Public Hearing**

No person testified concerning the rule. The record was held open for written comments until 4:30 on Friday, February 18, 2011, but ETF did not receive any written comments.

## **Modifications to Rule as Originally Proposed**

No changes were made from the original proposal as a result of public comments.

## **Modifications to Fiscal Estimate as Originally Proposed**

No changes were made to the fiscal estimate in the original proposal.

## **Modifications to the Analysis Accompanying the Proposed Rule**

No changes were made to the analysis accompanying the proposed rule.